



R A T C L I F F L A W , P L L C
N E W Y O R K

June 23, 2023

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VIA ECF

Honorable Colleen McMahon
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Request to file record under
Seal, granted.

Colleen McMahon

6/26/2023

Re: *M.E. and J.E., individually and on behalf of G.E. v.
The New York City Department of Education; 22-cv-09642*

Dear Judge McMahon:

I write jointly with Defendant's counsel to respectfully request permission to file the attached Certified Record from the State Review Office under seal in this matter, pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure and the Court's individual practices. The Certified Record contains educational and medial records replete with confidential information, including the name, date of birth, and other pedigree information of the minor student, G.E., on whose behalf this action is brought. *See Fed. R. Civ. P. 5.2(a).*

Additionally, the record contains information describing G.E.'s disability, educational progress and history. These materials are confidential under the Individuals with Disabilities Education Act (IDEA) and the Family Education Rights and Privacy Act (FERPA). 34 C.F.R. § 99.3 (defining personally identifiable information under FERPA), § 300.32 (including a "list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty" as personally identifiable information under IDEA).

Moreover, as the underlying administrative proceeding is presumptively closed to the public pursuant to 34 C.F.R. § 300.512(c)(2), all documents recounting the proceeding should themselves be deemed confidential. *Id.* (permitting parents to choose whether a hearing is open or closed to the public). "For these reasons, courts in this Circuit have routinely allowed administrative records underlying IDEA cases to be filed under seal to protect the privacy interests of minor child plaintiffs." *L.B. v. New York City Dept of Ed*, 15-CV-3176, 2015 U.S. Dist. LEXIS 127081, *2 (S.D.N.Y. Sept. 22, 2015)(citing *C.L. v. Scarsdale Union Free Sch. Dist.*, 913 F. Supp. 2d 26, 30 (S.D.N.Y. 2012); *A.M. ex rel. Y.N. v. New York City Dep't of Educ.*, 964 F. Supp. 2d 270, 277 (S.D.N.Y. 2013)).

For the reasons above, the parties believe that the administrative record is appropriately filed under seal pursuant to *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (noting that countervailing factors weighing in favor of sealing include, *inter alia*, the

privacy interests of those resisting disclosure). In particular, the parties submit that the *Lugosch* standard is met because protecting G.E.'s privacy interests in keeping confidential the minor student's education and medical history constitutes a "compelling reason" to seal the record outweighs the public's interest in access. *Lugosch*, 435 F.3d at 121 (countervailing factors include, among others, the privacy interests of those resisting disclosure). Accordingly, Plaintiff respectfully requests leave to file the Certified Record in this action under seal.

Thank you for your consideration of this request. Please let me know if you have any questions or concerns.

Kind regards,



Jennifer Ratcliff

JR/sb

cc: Marlena Smith (via ECF)